IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 16517 of 2006(S)

OA.822/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONER:
---

1. THE UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF COMMUNICATIONS,
DEPARTMENT OF POSTS, NEW DELHI.

2. THE SUB DIVISIONAL INSPECTOR OF POST
OFFICES,
KANHANGAD SUB DIVISION,
KANHANGAD-671 315.

3. THE SUPERINTENDENT OF POST OFFICES,
KASARAGOD DIVISION,
KASARAGOD-671 121.

4. THE CHIEF POSTMASTER GENERAL,
KERALA CIRCLE,
THIRUVANANTHAPURAM.

BY SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

RESPONDENTS:

BIPPI.M,
S/O.KARTHAMBU, EX.GRAMIN DAK SEVAK MAIL CARRIER,
KALLAPPALLY.P.O, RESIDING AT KARIPPADAKAM HOUSE,
PANATHUR.P.O, RAJAPURAM, KASARAGOD.

BY ADV. SRI.P.C.SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF OA 822/2004 OF THE CAT, ERNAKULAM DT.6.11.2004

EXT.P2-TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS HEREIN IN OA 822/2004 DT.16.3.2005

EXT.P3-TRUE COPY OF ORDER OF THE CAT, ERNAKULAM IN OA 822/2004 DT.14.10.2005

// TRUE COPY//

P.S. TO JUDGE

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

- -

W.P.(C).NO.16517 of 2006-S

- -

Dated this the 20th day of September, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioners are the respondents in O.A. No.822/2004 of the Central Administrative Tribunal, Ernakulam. The said O.A., a copy of which is produced as Ext.P1, was filed by the respondent herein. He was a Mail Carrier. Owing to the disability arising out of an accident, he was not able to discharge the job of the Mail Carrier. Therefore, he was terminated from service by the Postal Authorities by order dated 4.8.2003. The respondent challenged the said proceedings by filing the above O.A., relying on Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. By Ext.P3 judgment, the O.A. was allowed. The petitioners herein were directed to permit the applicant to continue in service and to take action to adjust him against any post in the same pay scale and if the applicant is not considered suitable for any post, they were further directed to take action to keep him in a supernumerary post as enjoined under the provisions of the above said Act. The petitioners attack the said order of the Tribunal, on the ground that the

accident did not arise during the course of the employment and therefore he is not entitled to get the protection of the provisions of Section 47 of the above said Act. The said point was rightly overruled by the Tribunal. It is also covered against the petitioners by the judgment of this court in **F.A.C.T. v. Gopinatha Panicker** (2004 (2) KLT 455). The relevant portion of the said judgment reads thus:

> "In the case before us the respondent joined service of the Company on 29.7.1997 and he met with an accident on 26.12.2001 when he was in service. Similarly, the respondent in W.A. No.2095 of 2003 joined service in May 1967 and he met with an accident on 16.9.2000 while he was in service. The Company is an establishment within the meaning of clause (k) of S.2 of the Act and is, therefore, obliged to comply with the provisions of S.47 of the Act in the case of the respondents. The respondents in their Writ Petitions had averred that they were covered by the provisions of the Act and that the employer could not terminate their services in view of the provisions of S.47 of the Act. In reply to these averments the Company in its counter affidavit had merely stated that the disability incurred by the respondent was not attributed to his employment nor did it occur during his employment. It was further averred that the accident which resulted in the physical disability occurred outside the premises of the Company and was not an accident during his employment. We are unable to accept the stand taken by the Company. It is not the requirement of S.47 that the accident resulting in the disability should have arisen out of or in the course of his employment. It is enough if an employee acquires disability"during his service". The words 'during his service' would obviously mean after he has joined the service and before the same is terminated. It is also not necessary that the accident should have taken place within the premises of the Company. In this view of the matter we are satisfied that the case of the respondents is squarely covered by the provisions of S.47 of the Act and that the Company could not dispense with their services

> merely because they had acquired a disability during their service. It is not the case of the Company that the respondent has not suffered any 'disability' or that the respondent is not a 'person with disability'. Rather the Company itself got the respondents examined through a Board of doctors and found that they were unable to perform the assigned duties on account of the disabilities acquired by them during their service. It cannot be disputed that the Company is an establishment within the meaning of clause (k) of S.2 of the Act being a government company as defined in S.617 of the Companies Act and was, therefore, bound to comply with the provisions of S.47 of the Act.

The petitioners also contended that the decision of the Tribunal that Rule 3 of Gramin Dak Sevak (Conduct & Employment Rules) 2001 cannot have any efficacy in view of the provisions of the above said Act, is erroneous. We find it difficult to accept the said contention. If Rule 3 of the above said Rules runs counter to the provisions of a plenary statute, there cannot be any doubt that the latter will prevail.

2. Next it is contended that the Gramin Dak Sevaks are outside the scope of civil services of the Union and therefore the provisions of the Act are not applicable. Section 47 of the above said Act deals with the duty of establishments. Establishment is defined in Section 2(k) of the Act which includes departments of the Government. The respondent is working under the postal department. Therefore, he is an employee under an establishment as defined under Section 2(k) of the Act. Therefore, the said contention

cannot also be accepted.

In the result, the writ petition fails and it is accordingly dismissed.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/